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10/506,979	09/08/2004	Alain Delache	BONN-120	6948

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EXAMINER
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PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/506,979  
Filing Date: September 08, 2004  
Appellant(s): DELACHE ET AL.

\_\_\_\_\_  
Stephen G. Adrian  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**  
**DEC 26 2007**  
**Group 3700**

This is in response to the appeal brief filed on September 1<sup>st</sup>, 2006 appealing from the Office action mailed on December 28<sup>th</sup>, 2005.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

There are no other prior or pending appeals, interferences or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal as stated in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments***

An amendment after final has been filed however, the appealed claims does not contain the proposed amendments.

**(5) *Summary of Claimed subject matter***

The summary of claimed subject matter contained in the brief is correct.

**(6) *Grounds of rejection to be reviewed on appeal***

The ground of rejection set forth in the appeal brief is correct.

**(7) *Claim Appendix***

The appealed claims in the appendix of the brief are correct.

**(8) Evidence relied upon**

2004/0187870      Matthews et al.      09-2004

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Original claims 9-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Matthews et al. (US 2004/0187870). The rejection is set forth in prior office action dating December 28<sup>th</sup>, 2005.

**(10) Response to Argument**

In response to applicant's argument that Matthews does not disclose a control unit to adjust the pressure delivered by the blower at the level of the mask, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Also the term "at the level of the mask" in claim 9 can be defined as a specific event or condition and as stated by Matthews on page 5 paragraph [0072] "...While in control, each controller treats the specific event/condition by performing its control functions, such as adjusting the pressure output from the pressure support system via the pressure generating system...". Therefore, the control unit of Matthews does adjust the pressure delivered by the blower at the level of the mask.

In response to applicant's argument that Matthews does not disclose a ramp module that is connected to the control unit in order to provide the control unit with a value of pressure  $P_M$  to settle at the mask, it has been held that a recitation with respect to the manner in which a claimed

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apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). In a broad sense the ramp module 118 of Matthews is connected to the control unit 106 of Matthews electronically (see page 6 paragraphs [0079], [0080] and [0081]).

In response to applicant's argument that Matthews fails to teach a comparator connected to the ramp module **(the comparator 140 is connected to the ramp module electronically; if the applicant had stated that the comparator is located within and directly connected to the ramp module as shown in applicant's figure 1, the examiner would have allowed the case. However since the applicant claimed that the comparator is connected to the ramp module, in a broad sense the comparator is connected to the ramp module electronically)**, at least one means for detecting the patient's breathing parameters **(snore monitoring module 142 is defined as means for detecting patient's breathing parameters (snore events) see page 7 paragraph [0094])** during the ramp period and sending them to the comparator such that the comparator is able during this ramp period to determine whether an event occurs in patient's breathing based on the breathing parameters and to send the corresponding data to the ramp module which provides the control unit with values of pressure  $P_M$  that will speed up with respect of time during this ramp period **(inherently if the control is given to the snore controller and if there is an increase in pressure, there will be data sent to the ramp module within the ramp period as stated on page 7 paragraphs [0094], [0095] and [0096])**.



For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

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December 4<sup>th</sup>, 2006

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